

MONTANA LEGISLATIVE HISTORY

Chapter 182 1965

Bill H 239 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 08 ☒ C

Feb 09 ☒ C

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_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Feb 20 ☒ C

Feb 24 ☒ C

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Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

SENATE JUDICIARY COMMITTEE MEETING - February 20, 1965

Senator Mahoney, Chairman

Senator Dussault, Vice Chairman

The meeting was called to order by the Chairman, Senator Mahoney. All of the committee members were present.

Appearing before the committee in support and as a co-author of House Bill No. 238 was John Sheehy, Representative from Yellowstone County. He informed the committee that the purpose of this bill, relating to eminent domain proceedings, was to alter and revise the procedures for determining compensation to be paid defendants and to put the plaintiff in possession; also, to amend a section of the present law to grant defendants the right to elect whether the final determination and assessment of compensation will be made by condemnation commissioners or a jury, and to provide generally for the determination and assessment of compensation. The bill also amends another section of the present law to provide the procedure for determining compensation in district court and to provide for the rights of the parties.

Also appearing before the committee in support of House Bill No. 238 was Tom Kelly, an attorney from Billings. He presented to the committee documents and figures in support of the bill. Also presented in evidence of support of the bill was a telegram signed by Dale F. Galles, attorney from Billings.

Appearing before the committee in opposition to House Bill No. 238 was Tom Harrison, from Helena, representing the Highway Department. Mr. Harrison also presented to the committee several documents in opposition to the bill.

Mr. Sheehy and Mr. Kelly also appeared before the committee in support of House Bill No. 239. Mr. Sheehy told the committee that the purpose of this bill, relating to eminent domain proceedings, was to amend a section of the present law to clarify the interest payable to a property owner. Mr. Harrison also appeared before the committee in opposition to House Bill No. 239.

Appearing before the committee in support of House Bill No. 311 was John Sheehy, Representative from Yellowstone County. He informed the committee that this bill had the purpose of amending sections of the present law regarding the seizure and destruction of obscene matter.

Mr. Sheehy also appeared before the committee in support of House Bill No. 312. He told the committee that the purpose of this bill was to amend the statute on the distribution of obscene literature or material to minors or others and also regarded the trial of actions brought under this section, and to provide penalties for its violation. Rev. Howard Y. Williams, representing the Montana Council of Churches, also appeared before the committee in support of this bill.

Gordon Lippard, from Butte, representing the Montana License Beverage Industries, appeared before the committee in support of House Bill No. 306. He informed the committee that the purpose of this bill was to amend a section of the present law to provide for a ten percent reduction to any person who buys in case lots from the Montana State Liquor Stores. Tom Powers, the Mayor of Butte, also appeared before the committee in support of this bill. Ray Wayrynen, Representative from Silver Bow

SENATE JUDICIARY COMMITTEE MEETING - February 24, 1965
Senator Mahoney, Chairman
Senator Dussault, Vice Chairman

The meeting was called to order by the Chairman, Senator Mahoney. All of the members were present.

After consideration of House Bill No. 30, Senator Dussault made a motion and was seconded by Senator Huntley that the committee recommend that House Bill No. 30 be concurred in. The motion was carried.

After consideration of House Bill No. 72, it was moved by Senator Cumming, seconded by Senator Turnage, that the committee recommend that House Bill No. 72 be not concurred in. The motion was carried.

After consideration of House Bill No. 128, Senator McDonnell made a motion, seconded by Senator Cumming, that the committee recommend that House Bill No. 128 be concurred in. The motion was carried.

After consideration of House Bill No. 155, Senator Huntley made a motion and was seconded by Senator Turnage that the committee recommend that House Bill No. 155 be concurred in. The motion was carried.

After consideration of House Bill No. 238, it was moved by Senator Turnage and seconded by Senator Huntley that the committee recommend that House Bill No. 238 be concurred in. The motion was carried.

After consideration of House Bill No. 239, Senator Turnage made a motion and was seconded by Senator McDonnell that the committee recommend that House Bill No. 239 be concurred in. The motion was carried.

After consideration of House Bill No. 243, the following amendments were proposed: Amend the title on page 1, lines 8 and 9 of the original bill, by striking the word "FELONY" and inserting in lieu thereof the word "MISDEMEANOR" and after the semicolon by striking the following words and punctuation: "PROVIDING A PUNISHMENT THEREFORE;"; Further amend the title on page 1, lines 10 and 11 of the original bill, by striking after the semicolon the following words: "PERSONS ACTING FOR NEWS MEDIA;"; further amend on page 1, Section 1, line 18 of the original bill, being page 1, Section 1, line 3 of the printed bill, by striking the following words and punctuation: "the human voice,"; further amend on page 1, Section 1, line 20 of the original bill, being page 1, Section 1, line 5 of the printed bill, by striking the word "felony" and inserting in lieu thereof the word "misdemeanor" and striking the rest of the Section; further amend on page 1, Section 2, line 28 of the original bill, being page 2, Section 2, line 4 of the printed bill, by striking the following words and punctuation: "persons acting for news media;". Senator Huntley made a motion, seconded by Senator Turnage, that the amendments be adopted. The motion was carried. Senator McDonnell then made a motion and was seconded by Senator Cumming that the committee recommend that House Bill No. 243, as amended, be concurred in. The motion was carried.

JUDICIARY COMMITTEE
February 8, 1965

The Judiciary Committee met at 8:00 a.m. Monday, February 8, 1965, in the Committee Room. The meeting was called to order by Chairman Sheehy. On roll call, all members were present except Representative O'Hair who was excused.

HOUSE BILL 323, was the first bill under discussion.

PROPOSERS appearing in support of the bill were:

Don McPherson, of the Montana Highway Commission.

Tom Harrison, of the legal staff of the Montana Highway Commission.

Representative Scheye, co-sponsor of this bill.

OPPOSERS to this bill were:

Tom Kelly, Billings lawyer.

Dale Gallas, a Billings lawyer.

House Bills 238 & 239 were mentioned intermittently and finally Mr. Harrison rose in opposition to these two bills. Then Mr. Gallos advised that Judges Sande and Fenton were opposed to 323, and Judge Sande was calling Judge Castle today to register his opposition.

Mr. McPherson explained their problems in condemnation, and Mr. Kelly, and Mr. Gallas presented their information. Mr. Hall asked Mr. Gallas if he and Mr. Kelly were representing anyone. Mr. Gallas answered in the negative - that they were there at their own expense. Mr. Felt asked, "If this bill would go through the house, would you at your own expense appear before the Senate?" Mr. Gallas answered that they would.

There was much questioning by the committee members of all persons appearing. However, after they were dismissed, there wasn't much time for discussion due to the fact it was nearly 10:00 and time for the House to convene.

HOUSE BILL 258. Gene Picotte, Helena lawyer, representing Montana Contractors appeared in opposition to this bill. He stated the way the bill was written if the subcontractor was not covered by liability, a home owner, having a dwelling built could be responsible in the event of accident to workers.

No further business on the agenda, the meeting adjourned until 8:00 a.m. Tuesday, February 9th.


JOHN C. SHEEHY, Chairman

JUDICIARY COMMITTEE

February 9, 1965

The Judiciary Committee met at 8:00 a.m. Tuesday, February 9, 1965, in the Committee Room. The meeting was called to order by Chairman Sheehy. On roll call, all members were present, except Representatives Gilfeather and Sullivan who were excused.

HOUSE BILL 440 was the first bill under discussion: Chairman Sheehy advised the opponents and proponents each side would be allowed one half hour. Mr. Felt, sponsor of the bill, advised he delivered copies of the bill to the opponents previously. He went on to explain the bill. When he finished he advised he would use his additional time after the opponents had finished speaking.

The opponents appearing on this bill were:

Mr. Lewis Brown, Butte lawyer, representing the Anaconda Company, Mr. Brown served as the one who introduced the opponents:

Mr. Earl Lovick, Asst. Mgr. Zonolite Division of W.R. Grace & Co., Libby, Montana.

Mr. Ward Shanahan, Helena, representing Permanente Plant at Montana Plant at Montana City.

Mr. Leonard Schultz, Dillon, Montana; counsel for the Tri-State Minerals and Carter Creek Holdings - producing talc.

Mr. Anders, a small gold mine operator.

Mr. Smith, of Missoula, representing the Roberts Mining Co., Ravalli, Montana.

Mr. Hoyt Larison, representing the American Chemic Corp. and small talc operators in Beaverhead and Madison County.

Mr. Dan Lane, Helena, representing Montana Mining Assn.

Mr. Ed Quinn, Butte, representing the Anaconda Company, as a tax expert.

Each of the above mentioned spoke in opposition to the bill - after which Representative Felt used the balance of time allotted him, and advised he would be glad to answer any questions. Chairman Sheehy advised 10 minutes would be allotted for each side.

After the opponents were dismissed, there was a general discussion among the committee members, after which Mr. Sheehy asked for some action on this bill. Mr. Felt made the motion that HOUSE BILL-440 be amended as set out in the typewritten copy which he passed to the committee members, and as amended DO PASS. Mr. MacCalman made a substitute motion of DO NOT PASS. On the vote for the substitute motion, the MOTION WAS LOST. And, back to the original motion, that the bill be amended, and as so amended, DO PASS -- the Motion Carried.

HOUSE BILLS 238-239 and 323 were then discussed. Mr. Mather brought up the fact that House Bill 238 would have to be amended in the Title of Appeal - 9912.

Due to the fact that it was almost time for the House to convene for the morning session the meeting adjourned, and action on HOUSE BILLS 238-239 and 323 will be considered on Wednesday.

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county and school district would be affected if this becomes law. The question of the State Board of Equalization having too much power and the county not having any came under quite a bit of discussion. Mr. Felt made a motion that House Bill 381 DO PASS, Mr. Bailey seconded. There was further discussion. Mr. MacCalman was interested in having it clarified when it would take effect. The chairman brought the group back to the motion. The motion failed. Mr. Deschamps made a motion of DO NOT PASS. Mr. McNamer made a substitute motion that the bill be passed over for the day. Mr. Deschamps withdrew his motion. So, the substitute motion. The motion carried.

HOUSE BILL 382 - Mr. McNamer made a motion that this bill DO NOT PASS. Mr. Sullivan seconded. Motion carried.

HOUSE BILL 279 - following a general discussion of this bill, Mr. Deschamps made a motion that this bill be amended, and DO PASS. Mr. Mather stated he opposed the motion.

Mr. Felt made a motion of DO NOT PASS, and Mr. Hall seconded it. Motion carried.

HOUSE BILL 312 - Mr. Sheehy advised he had asked for House Bill 312 to be returned for amendment - there was an error in the typing of the bill. This bill had previously been reported out of Committee with a DO PASS. It would be amended by deleting the first paragraph, and putting in the second paragraph. Mr. Mather made the statement he wanted it understood that no matter what comes out of committee he reserved the right to vote as he saw.

HOUSE BILL 323 - Mr. Felt made the motion of DO NOT PASS. Mr. O'Hair seconded. Motion carried.

HOUSE BILL 238, relating to eminent domain proceedings. Mr. Deschamp made a motion of DO NOT PASS. After a bit of discussion, Mr. Rehberg made a substitute motion of DO PASS. The motion failed.

Mr. Felt made a motion that various amendments be made to the bill, and AS AMENDED DO PASS. The motion carried.

HOUSE BILL 239 - Mr. Hall made a motion that this bill DO PASS. Seconded by Mr. Sullivan. The motion carried. (There was a request from Engrossing Department to make correction in the title of the bill removing the "section" sign.) This amending was done through committee report.

HOUSE BILL 446 - Mr. Rehberg made a motion DO NOT PASS. Mr. Felt seconded. The motion carried.

HOUSE BILL 51 - Mr. Sheehy advised the committee he would like to keep this bill alive to see what would happen with House Bill 19.

HOUSE BILL 461 - Mr. Hall sponsor of this bill, discussed it with the committee. He stated he feels that the owner should be protected. He read the amendment he felt was necessary, and made the motion

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 94-8704, R. C. M. 1947, is amended to read as follows:

Forfeit of bail or deposit—notice of bondsman or surety.

"94-8704. (1) *Before a bail undertaken or deposit is forfeited, it shall be shown that the bondsman or surety was mailed notice seventy-two (72) hours before the time of required appearance of the defendant unless the time of required appearance was within seventy-two (72) hours from the time of arrest or unless a specific time of appearance was stated on the face of the bond, citation or summons.*

Forfeit of bail—when.

(2) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking, or the deposit to be discharged upon such terms as may be just.

Approved March 4, 1965.

CHAPTER 182

An Act Relating to Eminent Domain Proceedings; Amending Section 93-9913, R. C. M. 1947, to Clarify the Interest Payable to a Property Owner; Repealing All Acts or Parts of Acts in Conflict Herewith; and Providing a Severability Clause and an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 93-9913, R. C. M. 1947, as amended, be and the same is hereby amended to read as follows:

Date of assessment of compensation.

"93-9913. (9945) **The date with respect to which compensation shall be assessed.** For the purpose of

assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

Interest.

(a) *The date on which the right to appeal to the Montana supreme court expires, or*

(b) *The date on which the property owner withdraws from court the full amount finally awarded.*

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

Interest limitation.

Improvements.

Section 2. If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act.

Severability clause.

Section 3. All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed.

Repealing clause.

Section 4. This act shall be in full force and effect immediately upon the date of its passage and approval.

Effective immediately.

Approved March 4, 1965.